

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS**

PATRICK WHEELER, individually and on behalf of all others similarly situated,

Plaintiff,

Civ. No. 3:13-cv-02823-P

v.

FROZEN FOOD EXPRESS INDUSTRIES, INC, JERRY T. ARMSTRONG, W. MIKE BAGGETT, BRIAN R. BLACKMARR, BARRETT D. CLARK, KEVIN K. KILPATRICK, T. MICHAEL O'CONNOR, STONEY M. STUBBS, JR., S. RUSSELL STUBBS, JOHN T. HICKERSON, DUFF BROTHERS CAPITAL CORPORATION, and DUFF BROTHERS SUBSIDIARY, INC.

Defendants.

**NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 41(a)(1)(A)(i)**

Plaintiff Patrick Wheeler, by and through counsel, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure, hereby gives notice of the dismissal of Defendants Frozen Food Express Industries, Inc., Jerry T. Armstrong, W. Mike Baggett, Brian R. Blackmarr, Barrett D. Clark, Kevin K. Kilpatrick, T. Michael O'Connoer, Stoney M. Stubbs, Jr., S. Russell Stubbs, John T. Hickerson, Duff Brothers Capital Capital Corporation, and Duff Brothers Subsidiary, Inc. (the "Defendants") from this proposed class action without prejudice. Plaintiff moves that an Order be entered granting approval of the voluntary dismissal of the Defendants without prejudice and

without notice in accordance with the provisions of Fed. R. Civ. P. 23(e). In support of this motion, Plaintiff states as follows:

1. The Defendants were named in this action in Plaintiff's Complaint filed on July 19, 2013.
2. This Court has subject matter jurisdiction with respect to all claims asserted against each of the Defendants in this action.
3. The Defendants have not filed an answer or motion for summary judgment.
4. No motion for class certification has yet been filed in this action.

WHEREFORE, Plaintiff respectfully moves for an Order approving the voluntary dismissal of this Action without prejudice and without notice pursuant to Fed. R. Civ. P. 23(e).

Dated: July 31, 2013

Respectfully submitted,

/s/ Jamie J. McKey

Joe Kendal
Texas Bar No. 11260700
Jamie J. McKey
Texas Bar No. 24045262
THE KENDALL LAW GROUP
3232 McKinney Avenue, Suite 700
Dallas, Texas 75204
214-744-3000/214-744-3015 (Facsimile)

LEVI & KORSINSKY, LLP
Shannon L. Hopkins, Esq.
30 Broad Street, 24th Floor
New York, New York 10004
Tel: (212) 363-7500
Fax: (212) 363-7171
Attorneys for Plaintiff